उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CrA No 416 सन् 2001

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT: Amarsai, S/o Gangaram Cherwa, Aged 20 years, R/o Village Kurthi, P.S. Sonhat, Tehsil Sonhat, District Koriya (Chhattisgarh)

-Versus-

RESPONDENT: State of Chhattisgarh, Through Police Station Sonhat, District Koriya (Chhattisgarh)

(Criminal Appeal under Section 374 (2) of the Cr.P.C.)

D.B.: - Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Sunil Kumar Sinha, JJ.

31-7-2007:-

Shri Sachin Singh Rajput, counsel for the appellant.

Shri Satish Gupta, Deputy Govt. Advocate for the State/ respondent.

Oral judgment dictated on *Dais.*

L.C. BHADOO, J.

This appeal is directed against the judgment of conviction and order of sentence dated 8-1-2001 passed by the Additional Sessions Judge, Baikunthpur, District Koriya, in S.T. No.216/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., for committing the murder of Baljeet, sentenced

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him to undergo imprisonment for life & to pay a fine of Rs.200/-, in default of payment of fine to further undergo R.I. for one month.

The case of the prosecution, in brief, is that on 4-4-2000 Baljeet (since deceased) had gone to Ramgarh for taking Tendu Patta bonus, as he could not get Tendu Patta bonus, he returned to his village, on the way, Laxmaniya, Singaro Bai and accused Amar Sai also met him, therefore, all the four were returning together. In the afternoon, they prepared meal and consumed. Thereafter, they started journey. Amar Sai was ahead of all the four, Baljeet was following him, after Baljeet, Laxmaniya and Singaro Bai were walking. After covering certain distance, on the Murgipani Mountain Road, the accused attacked deceased Baljeet with Farsi on the back side of his head, as a result of which he fell down and died instantaneously. Thereafter, the accused went towards Laxmaniya and Singaro Bai, but somehow they were able to escape. They went to the house of Gorelal Patel and informed him. PW-1 Manbodh, nephew of the deceased, had also gone to Ramgarh to receive Tendu Patta bonus. At about 4 p.m. he started proceeding for his village, on the way, he saw that the body of Baljeet was lying, there was injury on the head, therefore, he along with some persons stayed near the body. Next day morning, in the police station Sonhat merg intimation Ex.P/1 was given. Based on that, merg No.6/2000 was registered. The investigating officer left for scene of occurrence, after giving notice Ex.P/2 to the Panchas, prepared inquest Ex.P/3 on the body of the deceased. The

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investigating officer took into possession plain soil and blood stained soil from the place of occurrence under Ex.P/4. While in the police custody, the accused gave memorandum Ex.P/5 regarding the place where he kept Farsi, weapon of offence, in pursuance of that he got recovered Farsi under Ex.P/6. Site plan Ex.P/9 was prepared by Halka Patwari. The body of the deceased was sent for post-mortem examination to the Community Health Centre, Sonhat under Ex.P/10 where Dr. P.S. Kurre (PW-8) conducted the post-mortem on the body of the deceased, prepared post-mortem report Ex.P/11 and opined that cause of death was excessive haemorrhage caused due to heavy blow with hard and sharp cutting edged weapon leading to cardio-respiratory arrest. Injuries were ante mortem in nature. Death was homicidal in nature.

After completion of the investigation, charge sheet was filed against the accused in the Court of Chief Judicial Magistrate, Baikunthpur, who in turn committed the case to the Sessions Judge, Surguja from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused examined 9 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied material appearing against him in the prosecution evidence.

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Learned Additional Sessions Judge after hearing arguments of learned counsel for the respective parties, convicted and sentenced the accused as aforementioned.

We have heard Shri Sachin Singh Rajput, counsel for the appellant and Shri Satish Gupta, Deputy Govt. Advocate for the State/respondent.

At the outset, learned counsel for the accused/appellant has not disputed homicidal death of the deceased. Moreover, PW-2 Laxmaniya, wife of the accused and PW-3 Singaro Bai have stated that at the time of the incident they along with Amar Sai and deceased Baljeet were returning to their village, on the way, accused attacked the deceased with Farsi on the back side of the head. Ocular evidence of these two witnesses is corroborated by the medical evidence of Dr. P.S. Kurre (PW-8), Assistant Surgeon, who has stated that on 6-4-2000 at 4 p.m. he conducted postmortem on the body of the deceased, he noticed following injuries:-

(i) Incised wound on the left ear at a distance of 1" extending up to 4" on the back side, clotted blood was present, edges were regular, muscles and vessels were cut, injury was in the size of 5 x 1 x 1";

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(ii) Incised wound ½" above injury No. (i), clotted blood was present, parietal bone within injury was fractured which was in the size of 5 x 1 x 1".

Death was homicidal in nature. Injuries were caused by sharp and hard object. Cause of death was on account of excessive haemorrhage. Therefore, in view of the above ocular and medical evidence, it is established that death of the deceased was homicidal in nature.

As far as complicity of the accused/appellant in the crime in question is concerned, PW-2 Laxmaniya, wife of the accused, has categorically stated that she along with her husband, deceased and Singaro Bai, all four of them were returning to their village, on the way, they cooked meal and consumed. Thereafter, they again started for their village. After some time, accused attacked the deceased with Farsi on the back side of his head, as a result of which he fell down, blood started oozing out of the injury. Thereafter, the accused rushed towards Singaro Bai and he tried to attack her but Singaro Bai held Farsi. Thereafter, the accused threw stone towards Singaro Bai, that was also blocked by Singaro Bai. Thereafter, the accused climbed the hill. They came and informed Gorelal. The above evidence is corroborated by the evidence of PW-3 Singaro Bai. In cross-examination of these witnesses, defence has not been able to elicit any circumstance which discredit evidence of these two witnesses. Moreover,

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	Laxmaniya, is the wife of the accused and there was no reason before her to implicate her husband in a false case. Even weapon of offence Farsi was seized at the instance of the accused on the information given by him under Section 27 of the Indian Evidence Act. The matter was reported in the police station by PW-1 Manbodh, nephew of the deceased, who along with the deceased went to receive bonus of Tendu Patta in village Ramgarh. Since the accused was not having coupon, therefore, he was not able to receive bonus, therefore, he proceeded in advance for the village. However, PW-1 Manbodh started from Ramgarh at about 4 p.m.. When he was returning to his village, on the way, he saw that body of the deceased was lying on the way. He gave merg intimation Ex.P/1 in the police station Sonhat. Therefore, from the above ocular evidence of PW-2 Laxmaniya & PW-3 Singaro Bai, their evidence is corroborated by the medical evidence, complicity of the accused in the crime in question is established. The accused attacked the deceased with Farsi, deadly weapon, as a result of which, two incised wounds were inflicted on the left side above ear extending up to occipital region, the accused attacked with such a force that after cutting mussels and veins, even skull bone was fractured and the deceased died instantaneously. Therefore, intention of the accused to cause death of the deceased was writ large.	

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Barve	For the foregoing reasons, we do not find any illegality or infirmity in the judgment of the trial Court. The appeal being devoid of merit is liable to be dismissed and it is hereby dismissed. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Sunil Kumar Sinha** **Judge**

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